Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

SEACOAST MOTORS OF SALISBURY, INC.,
Petitioner,

v.

DAIMLERCHRYSLER MOTORS CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Court of Appeals properly determined that the arbitration clause, which was contained in an Agreement entered into between the Petitioner and the Respondent, should be enforced in an antitrust dispute between two domestic corporations.

PARTIES TO THE PROCEEDINGS

All parties to this proceeding are listed in the caption. Petitioner, Seacoast Motors of Salisbury, Inc. has no parent companies or nonwholly owned subsidiaries.

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PETITION FOR WRIT OF CERTIORARI

Seacoast Motors of Salisbury, Inc. respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The district court's opinion dismissing the Petitioner's complaint (App. 13a) is unpublished. The First Circuit's opinion dismissing Petitioner's appeal (App. 3a) is published at 271 F. 3d 6 (2001). The First Circuit's order denying rehearing and rehearing *en banc* (App. 1a) is not published.

JURISDICTION

The district court entered its order on January 31, 2001. The United States Court of Appeals entered its order on November 8, 2001. The First Circuit denied the Petitioner's timely petition for rehearing and rehearing *en banc* on December 4, 2001. The Petitioner invokes the jurisdiction of this Court under 28 USC 1254(1).

STATUTES INVOLVED

The statute relevant to this Petition is the General Laws of Massachusetts, Chapter 93B. Section 3, in pertinent part, states: "(a) Unfair methods of competition and unfair or deceptive acts or practices, as defined in section four, are hereby declared to be unlawful.

(b) In construing paragraph (a) the courts may be guided by the interpretations of the Federal Trade Commission Act (15 U.S.C. 45), as from time to time amended."

Section 4 of c. 93B, in pertinent part, states: "(1) It shall be deemed a violation of paragraph (a) of section three for any manufacturer, factory branch, factory representative, distributor or wholesaler, distributor branch, distributor representative or motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of said parties or to the public.

The Acts and Resolves of the General Court of Massachusetts, 1970 - Chapter 814, in pertinent part, stated: ". . ., unless the parties agree, the matter shall be submitted to final and binding arbitration under the principles herein prescribed, for a determination of the relevant market area, the adequacy of the servicing of the area by the existing dealer or dealers and the propriety of the granting of such additional dealership.

9 U.S.C. § 2. "Validity, irrevocability and enforcement of agreements to arbitrate. A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

STATEMENT OF THE CASE

This is a complaint seeking a declaration by the Court that the arbitration proceedings that were conducted, pursuant to the Agreement between the Petitioner and the Respondent,

were inappropriate for enforcement based on the case law interpreting Section 2 of Title 9.

The Petitioner claims that Chapter 93B of the General Laws of Massachusetts is an antitrust statute.

Petitioner is an automobile dealership that sells Chrysler vehicles in Salisbury, Massachusetts. Petitioner sued Respondent, DaimlerChrysler Motors Corporation, in Massachusetts state court alleging that Respondent's plan to authorize a new Chrysler dealership in nearby Haverhill, Massachusetts constituted unfair competition and unfair or deceptive trade practice in violation of state law.

Initially, the district court dismissed the Petitioner's suit and ordered arbitration. The Court of Appeals held that it lacked jurisdiction over the Petitioner's appeal because the district court's decision was interlocutory. Seacoast Motors of Salisbury, Inc. v. Chrysler Corp., 959 F. Supp. 52, 56 (D. Mass. 1997). The Petitioner's claim was submitted to arbitration and the Respondent prevailed.

The Petitioner again objected to arbitration in this suit, seeking to enjoin the enforcement of the arbitration award. The district court once again dismissed the matter and the Petitioner appealed to the Court of Appeals. The Court of Appeals affirmed the decision of the district court. Seacoast Motors of Salisbury, Inc. v. DaimlerChrysler Motors Corp., 271 F. 3d 6 (2001). The Petitioner filed a Petition for Rehearing and a Suggestion for Hearing en banc which were denied.

REASONS FOR GRANTING THE PETITION

I. THIS CASE IS THE APPROPRIATE VEHICLE TO RESOLVE THE CONFLICT IN THE CIRCUITS.

This Petition involves two domestic corporations.

In the case of Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc., 473 U.S 614, 629 (1985), this Court concluded that because of the concern of international comity, the agreement to arbitrate antitrust claims was valid, "even assuming that contrary result would be forthcoming in a domestic context."

This Court went on to say in Mitsubishi, Id., at 634, that that the core of the American Safety doctrine is "the fundamental importance to American democratic capitalism of the regime of antitrust laws."

The Petitioner is allowed by the General Laws of Massachusetts to institute the necessary actions similar to those allowed by the Clayton Act, 15 U.S.C. § 15.

The Massachusetts statute makes explicit reference to the fact that in construing unfair methods of competition that Massachusetts courts be guided by the interpretations of the Federal Trade Commission Act, 15 U.S.C. 45.

The statute c. 93B, when enacted initially in 1970, required that matters be submitted to arbitration. Since that time, that requirement has been removed from the statutes as was found by the Court of Appeals in this case at App. 9a.

. The intent of the Massachusetts legislature is evident that arbitration should not be used to resolve claims as those found in this case.

See American Honda Motor Co., Inc. v. Bernardi's Inc., 432 Mass. 425, 432 (2000):

> There is no question that 'c. 93B was enacted in recognition of the potentially oppressive power of automobile manufacturers and distributors in relation to their affiliated dealers.' Beard Motors, Inc. v. Toyota Motors Distribs., Inc., 395 Mass. 428, 432, (1985). 'Section 4(3)(1) is one of a set of provisions evidently directed to the time-honored State purpose of preserving a sound competitive market free of the domination of oligopolists at the top of a vertical chain of manufacture, distribution, and sale.' Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc., 376 Mass. 322-323, (1978).

See pages 635-636 of the Mitsubishi decision, which state with approval that a private cause of action plays a central role in enforcing the regime of the antitrust laws. The Court made a distinction between international actions and domestic actions and ruled that, as it applies to international trade, the arbitration process will not be excluded.

As was stated by the Court of Appeals in this case, several circuits have abandoned the American Safety doctrine in its entirety; however, there remain other courts that have not abandoned that doctrine. It now remains for this Court to remove the conflict between the circuits.

CONCLUSION

For all of the reasons presented herein, this petition for a writ of certiorari should be granted.

Respectfully submitted:

Nicholas J. Decoulos
DECOULOS & DECOULOS
Counsel for the Petitioner
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978/532-1020

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-1262
[Entered December 4, 2001]

SEACOAST MOTORS Plaintiff-Appellant,	))
v.	)
DAIMLERCHRYSLER Defendant-Appellee,	))

BEFORE
BOUDIN, Chief Judge,
COFFIN, Senior Circuit Judge
TORRUELLA, SELYA, LYNCH and LIPEZ Circuit Judges,

ORDER OF COURT

Entered: December 4, 2001

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for the holding of a rehearing en banc having been carefully considered by the judges of the court in regular active service and a majority of said judges not having voted

to order that the appeal be heard or reheard by the court en banc,

It is ordered that the petition for rehearing and the suggestion for rehearing en banc, be denied.

By the Court:

RICHARD CUSHING DONOVAN, Clerk

By: /s/JULIE GREGG
Appeals Attorney

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 01-1262

[Filed November 8, 2001]

SEACOAST MOTORS OF SALISBURY, INC., Plaintiff, Appellant,	)
v.	)
DAIMLERCHRYSLER MOTORS CORPORATION, Defendant, Appellee.	)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.
Hon. Nancy Gertner, U.S. District Judge.

JUDGES:
Before Boudin, Chief Judge, Coffin, Senior Circuit Judge, and Lynch, Circuit Judge.

OPINION

BOUDIN, Chief Judge. This case has its origin in a law suit against the auto manufacturer DaimlerChrysler Motors Corporation ("DaimlerChrysler") by Seacoast Motors of Salisbury ("Seacoast"), one of its dealers. Seacoast claims that DaimlerChrysler's decision to authorize a new competing dealer near Salisbury was an arbitrary and unfair trade practice under Mass. Gen. Laws. ch. 93B, §4(3)(l) (West 1997). The district court dismissed Seacoast's suit and ordered arbitration pursuant to a clause in Seacoast's dealership agreement that, both sides concede, covered the claim. *Seacoast Motors of Salisbury, Inc. v. Chrysler Corp.*, 959 F. Supp. 52, 56 (D. Mass. 1997).

Seacoast appealed to this court, arguing that its chapter 93B claim sounded in antitrust and was thus not arbitrable under the so-called American Safety doctrine. *See Am. Safety Equip. Corp. v. J.P. Maguire & Co.*, 391 F.2d 821, 827-28 (2d Cir. 1968). This court, on a ground later rejected by the Supreme Court in another case, *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 88-89, 148 L. Ed. 2d 373, 121 S. Ct. 513 (2000), held that it lacked jurisdiction over Seacoast's appeal because the arbitrability decision was "embedded" in the underlying substantive dispute and thus interlocutory. *Seacoast*, 143 F.3d 626, 628-29 (1st Cir.), *cert. denied*, 525 U.S. 965, 142 L. Ed. 2d 333, 119 S. Ct. 410 (1998).

Thereafter, Seacoast's claim was submitted to arbitration and DaimlerChrysler prevailed. Seacoast then repeated its objection to arbitrability in a new federal suit, brought in the same district court that had ordered arbitration, seeking to enjoin enforcement of the arbitration award. The

district court once again dismissed, this time without a written opinion, and Seacoast now appeals. We review the issue *de novo*. *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213, 215 (1st Cir. 2000).

At the threshold, there is uncertainty whether Seacoast has a timely cause of action in this case. DaimlerChrysler argues that Seacoast's challenge to the arbitration award is a suit to vacate the arbitration award under section 10 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §10 (1994). If so, Seacoast's claim is time-barred, because it failed to serve notice of the action on DaimlerChrysler within three months of the filing of the award (its service came six days late). 9 U.S.C. §12. Seacoast's reply is that this is not a motion to vacate under section 10 but an independent equitable action to enjoin the award not subject to section 12's time limit.

Section 10 sets forth a restricted list of grounds on which a court may entertain a motion to vacate an award; those grounds are directed primarily to fundamental errors within the arbitration process itself (e.g., fraud, misconduct) and, read literally, they may not include the anterior claim that the arbitration contract is itself invalid. Although section 12's three-month statute of limitations is not formally limited to motions to vacate "under section 10," such motions were surely what the drafters of the FAA had principally in mind.

Of course, the existence of a valid arbitration contract embracing the dispute is the predicate for everything else. Section 10 omits any reference to disagreements on this issue as a ground for attacking an award; but this is probably because the drafters assumed that any party who resisted arbitration would do so at the outset. If so, the issue would be

presented to the trial court on a motion to compel arbitration, either by a de novo motion (9 U.S.C. §4) or in resisting a civil suit by an adversary (9 U.S.C. §3), and resolved prior to arbitration.

Here, Seacoast brought a civil suit and did contest arbitrability; but when the district court held the matter subject to arbitration, it dismissed the case instead of staying the civil action. As already described, we in turn dismissed an immediate appeal on the ground that the judgment was not final and the Supreme Court then denied certiorari (even though it later held that such judgments are final). The question, then, is what vehicle is available for Seacoast to get appellate review now of its original claim that the dispute was not arbitrable.

One way is to read section 10, stretching its language, to include any adequately preserved ground (e.g., public policy) on which an arbitration award might be challenged--over and above those specifically listed in section 10. Alternatively, one might imagine some form of independent equitable action. There is limited precedent for both courses, and both have difficulties.[1] But even if an independent action were permitted, section 12 might still be read as a three-month time limit on attacks on arbitration awards subject to the FAA, however framed.

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[1] *See Advest, Inc. v. McCarthy*, 914 F.2d 6, 8-9 (1st Cir. 1990); *Societe Generale de Surveillance, S.A. v. Raytheon Eur. Mgmt. & Sys. Co.*, 643 F.2d 863, 867-68 (1st Cir. 1981); *see also* 4 MacNeil, Speidel & Stipanowich, *Federal Arbitration Law* §40.5 (1999); 2 *id.* §23.5.

These puzzles need not be resolved here and should be left for cases where they have to be decided. The procedural gap in the FAA that ensnared Seacoast has been closed by Green Tree: in the future, the party in Seacoast's position will be able to appeal the order of dismissal it suffered as a "final" order (and will at least risk a claim of waiver or law of the case if it does not). And where the district court finds that arbitration is required and enters a stay of the action before it, the arbitrability issue it decided will be adequately preserved for appellate review when the stay is ended and the district court later proceeds with enforcement.

We turn then to the merits, assuming arguendo that Seacoast has brought a timely challenge to the arbitrability ruling. There is no "jurisdictional" bar to our approach: the parties are diverse and there is clearly a constitutional case or controversy. *See Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 93-95, 140 L. Ed. 2d 210, 118 S. Ct. 1003 (1998). We conclude that even assuming that Seacoast's claim is properly before the court and not out of time, Seacoast still loses.

Seacoast argues that its claim under chapter 93B sounds in antitrust and is therefore nonarbitrable under American Safety. The provision of chapter 93B that gives rise to the suit is typical of so-called auto dealer protection statutes passed by many states since the 1960s. *See generally* ABA Antitrust Section, Monograph No. 17, *Franchise Protection: Laws Against Termination and the Establishment of Additional Franchises* (1990). Massachusetts' version prohibits *inter alia* auto manufacturers from "arbitrarily" granting a franchise to a dealer who intends to sell the same

line of cars in the same retail market area as an existing franchisee. Mass. Gen. Laws. ch. 93B, §4(3)(l).

To describe such a chapter 93B claim as "antitrust" is a very dubious use of language. The central aim of the antitrust laws is to protect consumers against certain abusive business practices--especially price-fixing and monopoly. *See* 1 Areeda & Hovenkamp, *Antitrust Law* ¶ 100a (2000). By contrast, dealer protection statutes, so far as they allow existing dealers to block new ones, are commonly aimed at *restricting* intrabrand competition (i.e., among dealers selling the same product). *See Heritage Jeep-Eagle, Inc. v. Chrysler Corp.*, 39 Mass. App. Ct. 254, 655 N.E.2d 140, 143-44 (Mass. App. Ct. 1995). Such restrictions are not normally pro-consumer, and, where imposed by dealers themselves as a naked restraint, can readily violate the antitrust laws. *United States v. Topco Assocs.*, 405 U.S. 596, 608 (1972).[2]

Insofar as such statutes protect against arbitrary ousters of existing dealers (*e.g.*, by a refusal to renew a franchise), Mass. Gen. Laws. ch. 93B, §4(3)(e), they may in principle serve to protect a small business from being mistreated by a large one. But even there, the aim is often one of fairness, not promotion of competition. *See Beard Motors, Inc. v. Toyota Motor Distribs., Inc.*, 395 Mass. 428, 480 N.E.2d 303, 306 (Mass. 1985). Antitrust law protects competition, not competitors. *Brown Shoe Co. v. United*

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[2] In some situations, a *supplier* like DaimlerChrysler may lawfully impose such restrictions (*e.g.*, granting exclusive territories) to protect dealer services against "free riding" or to promote dealer investment, *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 54-55, 53 L. Ed. 2d 568, 97 S. Ct. 2549 (1977); but here DaimlerChrysler seeks to *expand* dealer competition.

States, 370 U.S. 294, 320, 8 L. Ed. 2d 510, 82 S. Ct. 1502 (1962). In all events, nothing in Seacoast's complaint has to do with a threatened dealer cut-off; Seacoast simply does not want to face a new competitor.

Even if we assumed *arguendo* that Seacoast's claim could be classified as an antitrust claim, it remains arbitrable. Seacoast argues that the Massachusetts legislature made chapter 93B claims nonarbitrable in 1977 when it deleted a provision that automatically required arbitration absent clear agreement to the contrary. The inference that the 1977 change meant to *preclude* arbitration is doubtful and, in any event, is irrelevant. Because of the FAA's preemptive effect, the question is solely whether federal law or policy exempts antitrust claims from the pro-arbitration presumption of the FAA. *Southland Corp. v. Keating*, 465 U.S. 1, 10-11, 79 L. Ed. 2d 1, 104 S. Ct. 852 (1984).

To this, Seacoast urges a positive answer based on *American Safety*, in which the Second Circuit held that antitrust claims are not arbitrable because of "the pervasive public interest in enforcement of the antitrust laws." 391 F.2d at 827-28. This circuit once adopted *American Safety*, but the Supreme Court reversed, at least in the context of antitrust claims arising from international transactions. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 723 F.2d 155, 169 (1st Cir. 1983), *rev'd*, 473 U.S. 614, 629, 87 L. Ed. 2d 444, 105 S. Ct. 3346 (1985).

Since then, several circuits have abandoned the *American Safety* doctrine in its entirety. *See, e.g., Kotam Elecs., Inc. v. JBL Consumer Prods., Inc.*, 93 F.3d 724, 725-28 (11th Cir. 1996), *cert. denied*, 519 U.S. 1110, 136 L. Ed.

2d 835, 117 S. Ct. 946 (1997); *Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1442 (9th Cir.), *cert. denied*, 513 U.S. 1044, 130 L. Ed. 2d 544, 115 S. Ct. 638 (1994). Others have expressed doubt whether it remains good law. *See, e.g., Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 250 (7th Cir. 1994), *cert. denied* 516 U.S. 1159, 134 L. Ed. 2d 191, 116 S. Ct. 1044 (1996); *Swensen's Ice Cream Co. v. Corsair Corp.*, 942 F.2d 1307, 1310 (8th Cir. 1991). It is time to lay it to rest.

American Safety rested on the basic premise that the public interest in antitrust enforcement, the complexity of the antitrust laws, and the inadequacy of arbitral tribunals make arbitration of private antitrust claims inappropriate. This premise has since been rejected by the Supreme Court with respect to a variety of other statutory claims no less important or complex. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 114 L. Ed. 2d 26, 111 S. Ct. 1647 (1991) (Age Discrimination in Employment Act); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 104 L. Ed. 2d 526, 109 S. Ct. 1917 (1989) (1933 Securities Act); *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 96 L. Ed. 2d 185, 107 S. Ct. 2332 (1987) (1934 Securities Act and civil RICO).[3]

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[3] In *Page v. Moseley, Hallgarten, Estabrook & Weeden, Inc.*, 806 F.2d 291 (1st Cir. 1986), this court stated that the Supreme Court's decision in *Mitsubishi* did not overrule the *American Safety* doctrine where the context was domestic rather than international, and on this basis, *Page* held that civil RICO claims were not arbitrable. *Id.* at 299. But *Page's* holding was itself abrogated by the Supreme Court in *Shearson/American Express*, 482 U.S. at 225.

There is no question here of an advance waiver of antitrust claims; arbitration clauses do not eliminate substantive rights but submit them for resolution in an arbitral, rather than a judicial forum. *Mitsubishi,* 473 U.S. at 628. And while some antitrust cases do involve large issues in which the public has an interest, others are essentially business quarrels peculiar to the parties. For those in the former category, government agencies remain free to pursue the defendant regardless of private actions, whether before courts or arbitrators. We think time has passed by the *American Safety* doctrine and so hold.

Affirmed.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-1262
[Entered November 8, 2001]

SEACOAST MOTORS Plaintiff-Appellant,	))
v.	)
DAIMLERCHRYSLER Defendant-Appellee,	))

JUDGMENT

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By The Court:
Janice O'Neil, Acting Clerk

By: /s/ JULIE GREGG
Appeals Attorney

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Case: 1:00 - cv - 12188

[Filed January 30, 2001]

SEACOAST MOTORS)
Plaintiff,)
)
v.)
)
DAIMLERCHRYSLER)
Defendant,)
)

Judge Nancy Gertner - pre

NOTICE OF ACTION BY THE COURT

Notice To: Nicholas J. Decoulos,Esq.
Decoulos & Decoulos
248 Andover Street
Peabody, MA 01960

The following ruling was made on 1/30/01 and entered on the docket:

Judge Nancy Gertner. Endorsed Order entered granting [3-1] motion to dismiss. [EOD Date 1/31/01]

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 00-12188NG

[Dated November 20, 2000]

SEACOAST MOTORS OF SALISBURY, INC., Plaintiff,	)
v.	)
DAIMLERCHRYSLER MOTORS CORPORATION, Defendant,	)

DAIMLERCHRYSLER'S MOTION TO DISMISS

Defendant DaimlerChrysler Motors Corporation ("DaimlerChrysler"), pursuant to Fed. R. Civ. P. 12(b)(6), moves for the dismissal of plaintiff Seacoast Motors of Salisbury, Inc.'s ("Seacoast") Request for Special Action, As Required By Rule 5.1.(c): Preliminary Injunction ("Complaint"). The Court should dismiss the Complaint, which, in essence, is a motion to vacate an arbitration award entered on May 25, 2000 against Seacoast, for any one of three, independently sufficient reasons:

(1) Seacoast failed to serve DaimlerChrysler with notice of the Complaint within three months after the award was filed or Seacoast received the award, as required by 9 U.S.C. §12;

(2) assuming, *arguendo*, Seacoast properly served DaimlerChrysler, it failed to allege a sufficient basis under 9 U.S.C. §10 for the Court to vacate the award; and

(3) even if the Court reaches Seacoast's underlying contention, that it claim under Mass. Gen. Laws c. 93B is not subject to arbitration (when the parties have expressly agreed to arbitrate statutory claims), the Court should nevertheless dismiss the Complaint because the issue has already been decided against Seacoast. Seacoast Motors of Salisbury, Inc. v. Chrysler Corporation, 959 F. Supp. 52, 56 (D. Mass. 1997).

In further support of this motion, DaimlerChrysler submits its Memorandum in Support of Motion to Dismiss, filed together herewith.

WHEREFORE, the Court should DISMISS Seacoast's Complaint with prejudice, AFFIRM the arbitration award, and AWARD DaimlerChrysler its fees, costs, and any other relief the Court deems appropriate.

DAIMLERCHRYSLER MOTORS
CORPORATION

By its attorneys,

/s/_____
George W. Mykulak/BBO No. 365900
Susan B. Hanmer/BBO No. 568068
Hale and Dorr LLP
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(617) 526-6000

Dated: November 20, 2000

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Filed October 20, 2000]

SEACOAST MOTORS OF SALISBURY, INC., Plaintiff,	)
v.	)
DAIMLERCHRYSLER MOTORS CORPORATION, Defendant,	)

COMPLAINT

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. §1332 and 9 U.S.C. §10.

PARTIES

1. The plaintiff is Seacoast Motors of Salisbury, Inc. (Seacoast), formerly known as Danvers Highland Auto

Sales, Inc., a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having its usual place of business at 158 Elm Street, Salisbury, Essex County, Massachusetts.

2. The defendant is DaimlerChrysler Motors Corporation (DCMC), a corporation duly organized and existing under the laws of the State of Delaware and having its usual place of business in the Commonwealth of Massachusetts at 550 Forbes Blvd., Mansfield, Bristol County, Massachusetts.

ALLEGATIONS OF FACT

3. Seacoast and DCMC entered into Sales and Service Agreements dated October 21, 1991, wherein Seacoast was to sell and service Chrysler, Plymouth, Jeep, and Eagle motor vehicles at its location in Salisbury, Massachusetts.

4. On February 6, 1996, DCMC notified Seacoast, as required by the General Laws of Massachusetts, Chapter 93B, of its intention to create a new representation within the relevant market area of Seacoast (Appendix 1).

5. On February 22, 1996, Seacoast responded that the proposed new representation was in violation of Chapter 93B (Appendix 2-3).

6. On August 9, 1996, Seacoast filed a Complaint in the Superior Court, as required by the provisions of c.93B, to enjoin DCMC from creating the new representation" (Appendix 4-8).

7. On August 22, 1996, the Superior Court case was removed by DCMC to the United States District Court for the District of Massachusetts on August 22, 1996 (Appendix 9-ii).

8. On September 9, 1996, DCMC filed a motion to dismiss, or alternatively, stay action and compel arbitration (Appendix 12-13).

9. Seacoast has claimed, since the filing of the motion to dismiss in this Court, and through the appellate process and arbitration proceedings, that claims under anti-trust laws are of a character inappropriate for enforcement by arbitration. Seacoast claims that Chapter93B is an anti-trust statute.

10. On April 22, 1997, this Court allowed the Motion to Dismiss, without prejudice (Appendix 14-23).

11. Seacoast filed an appeal to the Court of Appeals (Appendix 24).

12. The appeal was dismissed for lack of jurisdiction (Appendix 25-33).

13. The case was submitted to arbitration, without prejudice to Seacoast's claim that the matter should not be heard by arbitration but adjudicated pursuant to the" General Laws of Massachusetts, c. 93B (Appendix 34).

14. An arbitration award was made wherein the claim of Seacoast was dismissed (Appendix 35-43).

15. Seacoast is entitled to a hearing as required by c. 93B of the General Laws of Massachusetts for two reasons, the first being that the matter was dismissed without prejudice, and secondly, that c. 93B was enacted for the purpose of preserving a sound, competitive market and to protect franchisees and claims under anti-trust laws are inappropriate for enforcement by arbitration.

16. In the month of September 2000, DCMC did effectuate the appointment of a new representation in Haverhill, Massachusetts, as described in its notice of February 6, 1996.

CAUSES OF ACTION

17. The appointment by DCMC is an unfair method of competition or an unfair or deceptive act or practice as defined in General Laws, Chapter 93B.

REQUEST FOR RELIEF

WHEREFORE, Seacoast requests:

1. That the Court issue a Short Order of Notice, ordering DCMC to appear and show cause why a Preliminary Injunction should not be issued, preliminarily enjoining DCMC from further implementing and maintaining the appointment pending a final determination of the issues raised by this Complaint; and that said Preliminary Injunction be automatically renewed every 30 days, as required by Chapter 93B, until a hearing is held on the merits of this Complaint.

2. That the Court conduct a hearing to determine whether such appointment is arbitrary and consider all of the pertinent circumstances, in particular, those circumstances set forth in Section 4 of Chapter 93B.

3. That after said hearing, the Court make a determination that the appointment is arbitrary and that DCMC be permanently enjoined from further implementing and maintaining a dealership in Haverhill, Massachusetts.

4. That the Court make a determination that the appointment by DCMC constitutes an unfair method of competition or an unfair or deceptive act or practice and that the Court permanently enjoin DCMC from continuing its unfair method of competition or unfair or deceptive act or practice and assess damages suffered by Seacoast pursuant to Chapter 93B.

5. And for such further orders or relief as this Court may deem just and proper in the circumstances.

/s/_____

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Tel. (508) 532-1020
October 19, 2000

I, George N. Dimopoulos, do hereby state under the penalties of perjury that I am the President of Seacoast Motors of Salisbury, Inc., the Plaintiff named and described in the foregoing Complaint; that I have read the contents thereof and as to all matters of fact therein stated the same is true and as to all matters therein stated on information and belief, I believe them to be true.

Seacoast Motors of Salisbury, Inc.
By:

/s/_____
George N. Dimopoulos, President

Supreme Court, U.S.
FILED
APR 5 2002
OFFICE OF THE CLERK

No. 01-1279

In The

Supreme Court of the United States

SEACOAST MOTORS OF SALISBURY, INC.,

Petitioner,

v.

DAIMLERCHRYSLER MOTORS CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether this Honorable Court should review the judgment of the Court of Appeals for the First Circuit affirming the dismissal of Petitioner's challenge to a domestic arbitration award in favor of Respondent, where the Court of Appeals' express rejection of the so-called *American Safety* doctrine does not conflict with a decision of any other United States Court of Appeals that has considered *American Safety* and its progeny following, as described by the Court of Appeals for the Ninth Circuit, this Court's "meticulous step-by-step disembowelment" of the doctrine in its intervening decisions, and where sufficient independent grounds otherwise exist to affirm regardless of the current validity of *American Safety*.

STATEMENT PURSUANT TO RULE 29.6

DaimlerChrysler Motors Corporation, now known as DaimlerChrysler Motors Company, LLC, is wholly owned by DaimlerChrysler North America Holding Corporation, which in turn is a wholly owned subsidiary of a publicly held parent company, DaimlerChrysler AG.

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BRIEF IN OPPOSITION

DaimlerChrysler Motors Corporation ("DaimlerChrysler") respectfully opposes the petition of Seacoast Motors of Salisbury, Inc. ("Seacoast") for a writ of certiorari to review the judgment of the Court of Appeals for the First Circuit in this case. Seacoast has failed to present any compelling reason that justifies this Court's review. *See generally* Rule 10 of the Supreme Court Rules.

FEDERAL STATUTES INVOLVED

In its Petition for Writ of Certiorari, Seacoast has omitted any reference to Sections 10 and 12 of the Federal Arbitration Act ("FAA"). 9 U.S.C. §§10, 12 (2002). Both of these statutes are implicated by the petition, because DaimlerChrysler advanced the threshold argument below that Seacoast's complaint was time-barred under Section 12 of the FAA. Pet., App. 5a-7a, 15a. Although the Court of Appeals elected to assume *arguendo* the timeliness of Seacoast's challenge in order to reach the merits of the appeal, DaimlerChrysler respectfully submits that Seacoast's failure to comply with Section 12 of the FAA constitutes sufficient independent grounds to affirm the dismissal of Seacoast's cause of action. Pet., App. 7a. The full text of Sections 10 and 12 of the FAA is set forth below.

§10. Same; vacation; grounds; rehearing.

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating

the award upon the application of any party to the arbitration

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

§12. Notice of motions to vacate or modify; service; stay of proceedings.

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

STATEMENT OF THE CASE

Seacoast's statement of the case is incomplete and misleading. Pet., 2-3. By the express terms of its complaint, Seacoast sought, pursuant to Section 10 of the FAA, to vacate the domestic arbitration award entered in favor of DaimlerChrysler on May 25, 2000. Pet., App. 17a. Seacoast further requested that the District Court adjudicate the merits of Seacoast's state law claims against DaimlerChrysler under Massachusetts General Laws, Chapter 93B. ("G.L. c. 93B"). Pet., App. 17a-22a. In requesting that the award be vacated, Seacoast relied on

several grounds, including a conclusory contention that its claims asserted under G.L. c. 93B were inappropriate for enforcement by arbitration, because G.L. c. 93B is "an anti-trust statute." Pet., App. 19a-20a.

DaimlerChrysler moved for dismissal with prejudice under Fed. R. Civ. P. 12(b)(6) on three independent grounds:

1. Seacoast's complaint was time-barred under Section 12 of the FAA, because Seacoast failed to serve DaimlerChrysler with notice of the complaint within three months after the arbitration award was filed or Seacoast received the award;

2. Even assuming *arguendo* that Seacoast complied with Section 12, Seacoast nevertheless failed to allege a sufficient basis under Section 10 of the FAA to vacate the award; and/or,

3. The issue of arbitrability was previously decided against Seacoast in *Seacoast Motors of Salisbury, Inc. v. Chrysler Corporation*, 959 F. Supp. 52, 56 (D. Mass. 1997).

Pet., App. 14a-15a.

The District Court granted DaimlerChrysler's motion to dismiss without any written opinion. Pet., App. 13a. In affirming, the Court of Appeals elected to determine the merits of the appeal, in particular the viability of the so-called *American Safety* doctrine as enunciated in *American Safety Equip. Corp. v. J.P. Maguire & Co.*, 391 F.2d 821, 825 (2nd Cir. 1968), rather than decide the threshold procedural and legal deficiencies of Seacoast's cause of action. Pet., App. 4a-11a. Although expressing doubt as to

the strength of either assumption, the Court of Appeals assumed *arguendo* that Seacoast's appeal was not time-barred and that Seacoast's claims under G.L. c. 93A were antitrust in nature. Pet., App. 5a-9a. DaimlerChrysler respectfully represents that Seacoast's failure to comply with Section 12 and its erroneous characterization of G.L. c. 93B as an antitrust statute each constitutes sufficient independent grounds for affirming irrespective of the current validity of the *American Safety* doctrine in the First Circuit. Seacoast's prosecution of this petition ignores both of these legal infirmities.

REASONS FOR DENYING THE PETITION

The sole reason advanced by Seacoast for this petition is that "this case is the appropriate vehicle to resolve the conflict in the circuits" with regard to the *American Safety* doctrine. Pet., 4. DaimlerChrysler respectfully submits that both Seacoast's underlying assumption of conflicting law and its presumption as to the appropriateness of this case for a writ of certiorari are incorrect.

I.

SEACOAST HAS FAILED TO ESTABLISH THAT THE RULING BY THE COURT OF APPEALS FOR THE FIRST CIRCUIT CONFLICTS WITH A DECISION OF ANY OTHER UNITED STATES COURT OF APPEALS THAT HAS CONSIDERED *AMERICAN SAFETY* AND ITS PROGENY IN LIGHT OF THIS COURT'S INTERVENING DECISIONS.

Seacoast's bald contention that the circuits are in conflict over the arbitrability of domestic antitrust

disputes misstates the current state of the law. Initially, the petition fails to identify any United States Court of Appeals decision that conflicts with the conclusion of the Court of Appeals in this case to "lay [the *American Safety* doctrine] to rest". Pet., App. 9a-10a. On the contrary, by expressly incorporating by reference the opinion of the Court of Appeals into the petition, Seacoast advances the argument that the Court of Appeals' rejection of *American Safety* is fully consistent with those circuits that have abandoned *American Safety* in its entirety and those circuits that have expressed doubt whether *American Safety* remains good law. Pet. 5; Pet., App. 9a-10a.

Moreover, Seacoast entirely ignores what has been described by the Court of Appeals for the Ninth Circuit as this Court's "meticulous step-by-step disembowelment of the *American Safety* doctrine" in *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985); *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987); and *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991). *Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1441-1442 (9th Cir.), *cert. denied*, 513 U.S. 1044, 115 S. Ct. 638, 130 L. Ed. 2d 544 (1994). Guided by these intervening decisions, as well as *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989), the Courts of Appeals for both the Ninth Circuit, in *Nghiem*, and the Eleventh Circuit have explicitly rejected *American Safety* and its progeny[1] as

[1] Prior to *Mitsubishi*, the Courts of Appeals for the Fifth, Seventh, Eighth, and Ninth Circuits followed the lead of

controlling precedent and have held that domestic antitrust claims are arbitrable. *Kotam Elecs., Inc. v. JBL Consumer Prods., Inc.*, 93 F.3d 724, 725-728 (11th Cir. 1996), *cert. denied*, 519 U.S. 1110, 117 S. Ct. 946, 136 L. Ed. 2d 835 (1997).

Indeed, the Court of Appeals for the Second Circuit appears to have refuted its previous decision in *American Safety* by affirming without opinion a district court's holding that in "the aftermath of [this Court's] decisions it seems unlikely that the principle of *Mitsubishi* will be limited to international transactions . . . the reasoning of *Mitsubishi* should apply with equal force to domestic claims." *Hough v. Merrill Lynch, Pierce, Fenner & Smith*, 757 F. Supp. 283, 286 (S.D.N.Y.), *aff'd without op.*, 946 F.2d 883 (2d Cir. 1991). Lower court cases have assumed such a refutation and have themselves rejected *American Safety* as controlling precedent in the Second Circuit. *See, e.g., Syscomm International Corporation v. Synoptics Communications, Inc.*, 856 F. Supp. 135, 139 (E.D.N.Y. 1994) ("While *American Safety* has not been explictly overruled, this Court believes . . . the Second Circuit would now hold that the principle of *Mitsubishi* is not limited to antitrust claims arising in international transactions, and that domestic antitrust claims are arbitrable"); *Gemco Latinoamerica, Inc. v. Seiko Time Corp.*, 671 F. Supp. 972, 980

American Safety in concluding that federal antitrust claims are not arbitrable. *Cobb v. Lewis*, 488 F.2d 41, 47 (5th Cir. 1974); *University Life Ins. Co. v. Unimarc Ltd.*, 699 F.2d 846, 850-851 (7th Cir. 1983); *Helfenbein v. International Indus., Inc.*, 438 F.2d 1068, 1070 (8th Cir.), *cert. denied*, 404 U.S. 872, 92 S. Ct. 63, 30 L. Ed. 2d 115 (1971); and *Lake Communications, Inc. v. ICC Corp.*, 738 F.2d 1473, 1479 (9th Cir. 1984).

(S.D.N.Y. 1987), *adhered to, in part, on other grounds, dismissed, in part, on other grounds, on reconsideration*, 685 F. Supp. 400 (S.D.N.Y. 1988) ("none of the justifications for the *American Safety* doctrine retain their vigor . . . our Court of Appeals would now hold that domestic antitrust claims are subject to arbitration.").

In addition, the following six circuits, while not explicitly deciding the issue, have expressed doubt as to the current validity of the *American Safety* doctrine:

The Third Circuit in *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1154 n.8 (3rd Cir. 1989), in generally discussing the change in the legal landscape with respect to the enforcement of arbitration decisions, cited *Mitsubishi* for the general proposition that antitrust claims, without distinction between domestic and international transactions, are arbitrable. *See also N.Y.C. Discount Shoe Co., Inc. v. Coray Management, Inc.*, 1987 U.S. Dist. LEXIS 3713, *12-13 (E.D. Pa. May 7, 1987) (concluding as a matter of law that plaintiffs' antitrust claims are arbitrable).

The Fourth Circuit in *Gilmer v. Interstate/Johnson Lane Corp.*, 895 F.2d 195, 201 (4th Cir. 1990), later affirmed by this Court in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991), in finding "no reason to suppose that ADEA claims are inherently ill-suited to arbitration," stated that in ruling that "antitrust and RICO claims were not beyond the ken of arbitrators, the Supreme Court brushed aside objections that such statutory claims were too complex for arbitrators to handle . . . ADEA disputes are, to put it mildly, no more generically complex than claims presented under the

Sherman Act and RICO." Furthermore, the Fourth Circuit, citing *Mitsubishi* and *McMahon*, stated "the Sherman Act reflects an important federal policy in preventing excessive concentration in relevant markets. Nonetheless, arbitration of claims under [this statute] is clearly encouraged." *Gilmer*, 895 F.2d at 202.

The Fifth Circuit in *Mayaja, Inc., S.A. v. Bodkin*, 803 F.2d 157, 162 n.6 (5th Cir. 1986), subsequently vacated by this Court and remanded for further consideration in light of *McMahon* in *Shearson Lehman Bros., Inc. v. Mayaja, Inc.*, 482 U.S. 923, 107 S. Ct. 3205, 96 L. Ed. 2d 692 (1987), noted that although "the Supreme Court did not explicitly overrule *American Safety* in the domestic context, *Mitsubishi* rejected so much of *American Safety's* reasoning it is difficult to say what is left of the opinion to rely on." *See also Smoky Greenhaw Cotton Co., Inc. v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 785 F.2d 1274, 1282 (5th Cir. 1986) (*per curiam, on petition for rehearing and suggestion for rehearing en banc*) (stating, though not in an antitrust context, that "although *Mitsubishi* arose in an international antitrust dispute and its holding purports to be limited to that context, we believe that its broad language may carry significance for domestic disputes as well"), *cert. denied*, 482 U.S. 928, 107 S. Ct. 1211, 96 L. Ed. 2d 698 (1987).

The Seventh Circuit in *Sanjuan v. American Bd. Of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 250 (7th Cir. 1994), *cert. denied*, 516 U.S. 1159, 116 S. Ct. 1044, 134 L. Ed. 2d 191, (1996), citing *Mitsubishi* and *Nghiem*, reasoned that companies "may agree to arbitrate their antitrust disputes – certainly so for international transactions, . . . and likely so for domestic transactions."

See also Kowalski v. Chicago Tribune Co., 854 F.2d 168, 173 (7th Cir. 1988) ("it seems unlikely after *McMahon* that the principle of *Mitsubishi* can be confined to international transactions").

The Eighth Circuit in *Swensen's Ice Cream Co. v. Corsair Corporation*, 942 F.2d 1307, 1310 (8th Cir. 1991), stated in *dicta* that, in view of *Mitsubishi* and *McMahon*, its prior holding in *Helfenbein v. International Indus., Inc., supra*, that "domestic antitrust violations are not subject to arbitration" may "no longer be a correct statement of the law". *See also id.* at 1311 (Beam, J., dissenting) (*Mitsubishi*, *McMahon* and *Gilmer* dictate that antitrust claims are subject to arbitration); *Hunt v. Up North Plastics, Inc.*, 980 F. Supp. 1046, 1050 (N.D. Minn. 1997) (antitrust claim in case is arbitrable).

The Tenth Circuit in *Coor's Brewing Company v. Molson Breweries*, 51 F.3d 1511, 1515 (10th Cir. 1995), in considering the scope of an arbitration clause, found that antitrust claims that implicated the licensing agreement were arbitrable.

Only two circuits have not had occasion to reconsider *American Safety* and its progeny in light of this Court's intervening decisions – the Sixth Circuit and the District of Columbia Circuit. However, their pre-*Mitsubishi* rulings rejecting the arbitrability of domestic antitrust claims were based on decisions that have been subsequently overruled. The Sixth Circuit in *Buffler v. Electronic Computer Programming Institute, Inc.*, 466 F.2d 694, 700 (6th Cir. 1972), relied in part on Ninth Circuit decisions that were overruled by *Nghiem*, 25 F.3d at 1441-1442. The District of Columbia Circuit in *Lee v. Ply*Gem Industries,*

Inc., 593 F.2d 1266, 1274-1275 (D.C. Cir.), *cert. denied*, 441 U.S. 967, 99 S. Ct. 2417, 60 L. Ed. 2d 1073 (1979), relied in part on *Cobb v. Lewis*, 488 F.2d 41 (5th Cir. 1974). *Cobb* was subsequently rejected as controlling law in *Kotam Elecs., Inc.*, 93 F.3d at 725-728. *See also Western Int'l Media Corp. v. Johnson*, 754 F. Supp. 871, 872-873 (S.D. Fla. 1991) (rejecting *Cobb* as controlling precedent in light of *Mitsubishi* and *McMahon*).

In view of this Court's complete erosion and implicit overruling of *American Safety* and its progeny, as recognized by the Courts of Appeals that have considered the issue, the purported conflict assumed by Seacoast does not exist, and further clarification by this Court is unnecessary.

II.

SUFFICIENT INDEPENDENT GROUNDS EXIST TO AFFIRM THE DISMISSAL OF SEACOAST'S COMPLAINT REGARDLESS OF THE CURRENT VALIDITY OF THE *AMERICAN SAFETY* DOCTRINE.

In any event, this case is hardly, as presumed by Seacoast, "the appropriate vehicle" to resolve any uncertainty that may exist as to the viability of *American Safety*. Sufficient alternative grounds exist for affirming without ever reaching the application of *American Safety* to Seacoast's claims. First, as determined by the Court of Appeals, it is uncontraverted that Seacoast failed to serve notice of the action on DaimlerChrysler within three months of the filing of the arbitration award as required by Section 12 of the FAA. Pet., App. 5a. If Seacoast is

held, as it should be, to the express jurisdictional predicate of its complaint under Section 10 of the FAA, then, as acknowledged by the Court of Appeals, Seacoast is time-barred under Section 12. Pet., App. 5a. Seacoast's attempt to escape Section 12's three month limitations period by framing its suit as an independent equitable action to enjoin the award should be treated as an unavailing elevation of form over substance.

Alternatively, Seacoast's reliance on *American Safety* hinges entirely on the threshold presumption that G.L. c. 93B is an antitrust statute. Seacoast has yet to cite any authority at any point throughout these lengthy proceedings commenced in 1996, that describes or characterizes its claims against DaimlerChrysler under G.L. c. 93B as antitrust in nature. The petition is conspicuously silent on the issue. Indeed, the Court of Appeals recognized that to "describe [Seacoast's] Chapter 93B claim as 'antitrust' is a very dubious use of language" and went to great lengths to distinguish G.L. c. 93B from antitrust laws. Pet., App. 8a-9a. Nevertheless, in order to reach the merits, the Court of Appeals assumed *arguendo* that Seacoast's claim "could be classified as an antitrust claim." Pet., App. 9a. DaimlerChrysler respectfully submits that Seacoast's claims under G.L. c. 93B are not antitrust claims, and that infirmity alone constitutes sufficient grounds to affirm the dismissal of Seacoast's cause of action without determining the precedential value of *American Safety*. Given the existence of these alternative grounds for affirmance, there is no compelling reason for this Court to grant the petition.

CONCLUSION

For all of the foregoing reasons, DaimlerChrysler respectfully requests that this Honorable Court deny Seacoast's petition for a writ of certiorari.

Respectfully submitted,

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